From: David Sills
To: Microsoft ATR
Date: 1/24/02 12:25pm
Subject: Microsoft Settlement

To whom it may concern:

I write to voice an opinion regarding the Microsoft Settlement currently being considered. In my opinion, this "remedy" does not deserve the name, as it does little to restrain the practices that have led to the current situation, and promises little real reform for the future. I wish to take a positive approach, however, and discuss two requirements that would represent a real improvement in the current situation.

It is clear from some of the documents available as a result of the case and an examination of Microsoft's practices generally that there are two methodologies for "fixing" the playing field that could quite easily be remedied. These are documentation of the interactions between Windows and other software and hardware, and blocking Microsoft's strategy of using patents to restrain competitors who would otherwise be able to produce competitive software.

The first would involve require Microsoft to make open and available to anyone all interfaces between software components, all communications protocols, and all file formats. This is not particularly difficult, and could easily be enforced: a court could simply require Microsoft to answer questions raised by any incomplete documentation. In particular, however, two arguments should not be allowed to impinge upon this remedy: nondisclosure agreements and security concerns. It would be trivial to circumvent such an order if Microsoft could simply say in response to such a court order that they could not answer it owing to nondisclosure agreements, which they could indeed require from other firms for exactly this purpose. As to security concerns, even if everyone knows the interfaces involved with Windows, it is unlikely that this actually raises the level of security risk. On the one hand, it makes it possible for standard solutions to any security issues to be promulgated much more quickly and efficiently; on the other, it is doubtful that much of the community attacking security vulnerabilities (including those commonly known "script kiddies") actually possess the technical

knowledge to make significant use of this information.

As to patenting, there is no intention here to keep Microsoft from sharing in the bounty their intellectual property creates. It is simply that some remedy must be found to keep them from patents for "innovations" that exist primarily not to solve software problems, but to block access to technologies from competitors. I am not a patent lawyer (I am in fact a software developer, and use both Microsoft and competing products), but am sure that there are persons in that profession with sufficient expertise to advise the court on appropriate provisions.

In sum, I would strongly voice my opinion against the current settlement, and I offer these improvements as a way to assist in fashioning a better one.

Thank you for your attention.

David Sills
